

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
For Approval to Commit Funds)
in Excess of \$500,000 for)
Item P0000886, Wal-Mart Sam's)
Keeaumoku Project; for Waiver)
of Rule 13; and for Waiver of)
Section 2.3.g.2 of General)
Order No. 7.)

DOCKET NO. 04-0021

RECEIVED
2004 APR 22 A 10:33
DIV OF CONSUMER AFFAIRS
DEPT OF PUBLIC UTILITIES
STATE OF HAWAII

DECISION AND ORDER NO. 20918

Filed April 21, 2004
At 10:30 o'clock A.M.

Karen Hignett
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
HAWAIIAN ELECTRIC COMPANY, INC.)	Docket No. 04-0021
For Approval to Commit Funds)	
in Excess of \$500,000 for)	Decision and Order No. 20918
Item P0000886, Wal-Mart Sam's)	
Keeaumoku Project; for Waiver)	
of Rule 13; and for Waiver of)	
Section 2.3.g.2 of General)	
Order No. 7.)	
_____)	

DECISION AND ORDER

I.

Application

By application filed on January 22, 2004 ("Application"), HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") requests commission approval to commit approximately \$2,049,905 for Item P0000886, Wal-Mart/Sam's Club Keeaumoku project ("Proposed Project"). HECO's request is made pursuant to section 2.3.g.2 of the commission's General Order No. 7, Standards for Electric Utility Service in the State of Hawaii ("G.O. No. 7").

HECO served copies of the application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").¹

¹On March 3, 2004, the commission approved the stipulation for protective order entered by and between HECO and the Consumer Advocate ("Protective Order No. 20833").

By Order No. 20837, filed on March 4, 2004, the commission granted HECO's request for a waiver of the section 2.3.g.2 requirement that its application be filed at least 60 days prior to the commencement of construction or commitment of funds and HECO's request for a waiver of Rule No. 13 of its Tariff, which would allow HECO to pay a portion of the underground conversion costs normally paid for by the customer.²

On April 15, 2004, the Consumer Advocate submitted its statement of position ("SOP"), in which it stated that it does not have any objections to commission approval of the Proposed Project.

II.

Background

A.

The Proposed Project was initiated upon the request of the general contractor of the Keeaumoku Wal-Mart/Sam's Club development, Dick Pacific Construction Company, Ltd. ("Dick Pacific"). The Proposed Project affects existing businesses in the area in addition to the Wal-Mart/Sam's Club development. The area to be developed is bordered by Keeaumoku, Makaloa and Rycroft Streets.

Work on the Proposed Project includes the following: (1) 12 kilovolt ("kV") overhead work to connect the 12kV underground system to the existing 12kV overhead system; (2) 12kV underground work to maintain the existing 12kV connection on the corner of Rycroft Street and Keeaumoku Street and to maintain the existing

²See discussion of the Rule No. 13 waiver, *infra*, at 4, n.11.

12kV services to the customers on the Diamond Head side of Keeaumoku Street; (3) 25kV underground work for the installation of 25kV underground facilities on Keeaumoku Street and Rycroft Street; and (4) on Rycroft Street, convert the HMSA service from 12kV to 25kV.³

The Proposed Project is necessary to accommodate the electrical needs of the Wal-Mart/Sam's Club project and to maintain the electricity needs of surrounding businesses. Additionally, HECO expects that its 25kV underground lines will be able to accommodate future developments in the area with additional electrical capacity.⁴

B.

The City and County of Honolulu ("City") is requiring Dick Pacific to relocate the existing overhead utility lines underground along Keeaumoku Street, between Makaloa and Rycroft Streets as a condition of issuing a building permit.⁵ Additionally, the City asserts that the utilities are responsible for the costs of undergrounding these lines.⁶ In making these

³See Application at 4-5.

⁴Id. at 7-8.

⁵Id. at 5.

⁶Verizon Hawaii Inc. ("Verizon") is also being required to place its utility lines underground and to assume the cost for such underground work in the Wal-Mart/Sam's Club development.

demands, the City relies upon Sections 14-21.3 and 14-22.1 of the Revised Ordinances of Honolulu ("ROH").^{7,8} Although HECO disagrees with the City's interpretation of the ordinances in question, it has nevertheless agreed to settle the issue of the costs for undergrounding with Verizon and Dick Pacific ("Agreement") in order to avoid the expense of litigation and to minimize the potential risk of each being found responsible for the entire cost.^{9,10,11}

⁷Section 14-21.3, ROH, reads, in relevant part, that the "cost of relocating the utility lines shall be borne by the respective privately owned utilities." Section 14-22.1, ROH, titled "Placement of facilities underground", provides that utilities "shall place their utility lines and related facilities underground whenever the following streets are improved pursuant to the provisions of Articles 17 through 21 of this chapter" and includes Keeaumoku Street.

⁸HECO asserts that the City's allocation of costs is erroneous on grounds, *inter alia*, that: (1) there is an error in the codification of ROH section 14-22.1; (2) Sections 14-21.3 and 14-22.1, ROH, were enacted as separate and distinct ordinances; (3) Section 14-21.3, ROH, requires only the relocation of lines, not the underground placement of utilities; and (4) Section 14-22.1, ROH, applied to Improvement Districts, under which there is generally applied a sharing of the costs of undergrounding between the City, the utility and the affected property owners. See Application at 6.

⁹See Application at 8.

¹⁰HECO submitted a confidential copy of the Agreement to the commission pursuant to Protective Order No. 20833. The main Wal-Mart/Sam's Club service is being provided in accordance with HECO's Tariff, and is not a part of the Agreement.

¹¹With regard to HECO assuming the costs of undergrounding because of the City's interpretation of the relevant ordinances, HECO required a waiver of Rule 13 of its Tariff, which the commission granted in Order No. 20837. Rule 13 of HECO's Tariff requires that, when agreed upon by HECO and a customer, overhead lines will be replaced with underground facilities provided the customer makes a contribution to the cost of the underground facilities, minus the estimated net worth of the removed overhead facilities. See Application at 10.

III.

Consumer Advocate

The Consumer Advocate examined: (1) whether the Proposed Project is necessary; (2) the reasonableness of the Proposed Project's scope; (3) whether contributions for the Proposed Project are reasonable; and (4) the reasonableness of the Proposed Project's costs.

A.

Whether the Proposed Project is Necessary

In light of the need for HECO to provide electrical facilities for the Wal-Mart/Sam's Club development, and to maintain electrical services for businesses in the surrounding area, the Consumer Advocate found that the Proposed Project was necessary.

B.

Whether the Scope of the Proposed Project is Reasonable

The Consumer Advocate recognizes that the scope of the Proposed Project is due, in part, to the City's reading of the relevant ordinances, and its insistence that HECO relocate the existing aerial lines below the ground.¹² Having said that, the Consumer Advocate finds that HECO should be allowed to relocate its existing overhead facilities to underground ducts. HECO has no alternative, but to comply with the City's conditions for undergrounding the electrical facilities if the Wal-Mart/Sam's Club

¹²The Consumer Advocate states that HECO's position regarding codification of the relevant ROH appears to have merit. See SOP at 6.

development is to move forward. Based upon these circumstances, the Consumer Advocate finds the scope of the Proposed Project to be reasonable. Additionally, the Consumer Advocate also finds HECO's decision to upgrade existing electrical facilities while it fulfills the electrical needs for Wal-Mart/Sam's Club to be reasonable. Allowing HECO to complete the betterment work now will minimize potential disruptions for any upgrading work to be performed in the future.

C.

Whether Contributions for the Proposed Project are Reasonable

The Consumer Advocate does not object to the terms and conditions of the Agreement whereby HECO, along with Dick Pacific and Verizon will pay for the costs associated with the City's required relocation and undergrounding of the existing utility lines. It cautions, however, that it will be necessary to carefully review the final costs incurred by HECO. In particular, the Consumer Advocate finds that contributions-in-aid-of-construction and allowance for funds used during construction costs can be best examined at the time HECO files its final cost report for the Proposed Project.

D.

Whether Costs for the Proposed Project are Reasonable

At this point in time, the Consumer Advocate does not object to the estimated costs for the Proposed Project. As discussed above in III.C, the Consumer Advocate asserts that the

final costs can be examined more closely at the time HECO files its final cost report, with any adjustments to the final costs considered at HECO's next rate proceeding following completion of the Proposed Project.

IV.

Findings and Conclusions

Upon a careful review of the Application, including HECO's responses to the Consumer Advocate's IRs, and the Consumer Advocate's SOP, we find the Proposed Project to be reasonable and in the public interest. The Proposed Project is necessary to implement the electrical needs of the Wal-Mart/Sam's Club construction project and surrounding businesses in the area. In addition, HECO is taking this opportunity to upgrade the existing 12kV system in the affected areas to 25kV to accommodate the existing and future needs of businesses in the surrounding area of development. Thus, the Proposed Project will not only supply the electrical needs of the upcoming development, but will provide an upgrade in electrical facilities for existing businesses in the area under development, in addition to satisfying the electrical needs for future planned developments.

We also find HECO's decision to relocate the existing electrical facilities underground to be reasonable in light of the City's insistence upon such relocation and related assumption of the costs. HECO's settlement of this issue despite its disagreement with the City over codification and interpretation of the relevant ordinances will allow HECO to avoid additional

litigation expenses and related risks, and will allow the Wal-Mart/Sam's Club development to move forward. We, thus, conclude that HECO's request for approval of the Proposed Project should be approved.

V.

Orders


THE COMMISSION ORDERS:

1. HECO's request for commission approval of approximately \$2,049,905 for Item P0000886, Wal-Mart/Sam's Club Keeaumoku project, in accordance with section 2.3.g.2 of G.O. No. 7, filed on January 22, 2004, is approved; provided that no part of the cost of the Proposed Project may be included in HECO's rate base unless and until the Proposed Project has been completed, and the Proposed Project is used and useful for utility purposes.

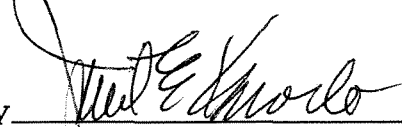
2. HECO shall submit a report within 60 days of the completion of the Proposed Project, with an explanation of any deviation of 10 per cent or more in the Proposed Project's cost from that estimated in the application. Failure to submit the report, as requested by this decision and order, will constitute cause to limit the cost of the Proposed Project, for ratemaking purposes, to that estimated in the instant application.

DONE at Honolulu, Hawaii this 21st day of April, 2004.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

04-0021.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20918 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM A. BONNET
VICE PRESIDENT, GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

PATSY H. NANBU
DIRECTOR-REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
GOODSILL, ANDERSON, QUINN & STIFEL
1800 Alii Place
1099 Alakea Street
Honolulu, HI 96813



Karen Higashi

DATED: April 21, 2004